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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,346	02/14/2002	Raymond Zappe	0144	2491

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EXAMINER

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,346

Applicant(s)

Zappe

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because: at [0053], line 7, the phrase "are disclosed" is inappropriate language for the abstract (see below).

Correction is required. See MPEP § 608.01(b).

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21, 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Mucher et al.

Mucher et al. disclose a bed liner 11 for the cargo area of a vehicle comprising in combination: a first base layer 17; a patterned second layer 20 inherently secured to the first base layer to prevent inadvertent removal; ^{of the second layer} and a clear third layer 18 indirectly and inherently secured to the patterned layer for permitting the patterned layer to be viewed. The liner is relatively inflexible in that it does not flex. The liner is relatively "flexible" as broadly interpreted in that the patterned second layer can be readily removed and replaced for providing various pictorial and logo modifications for the advertising, enjoyment, and amusement.

Mucher et al. inherently disclose the layers (base layer, second layer, and third layer) being "secured" to one another. Specifically, the layers must be held together for the preservation of the bed liner.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mucher et al. as applied to claim 21 above, and further in view of Egigian.

Mucher et al. lack the base layer of the liner being a foam layer.

Egigian discloses a paint saver pad 100 for use in truck beds for protecting the vehicle surface from wear caused by a liner. The pad is fabricated of a foam material. Furthermore, the pad can be utilized with all known commercially available liners without affecting the installation or effectiveness of the liner.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a paint saver pad as taught by Egigian upon the bed of the cargo area of the vehicle of Mucher et al. and to further have this pad act as the base layer in order to protect the surface of the bed from wear caused by the liner of Mucher et al.

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mucher et al. as applied to claim 21 above.

Mucher et al. disclose the patterned layer 20 having a pictorial designation 21 or a logo of a desired type but do not specifically disclose the patterned layer being monochromatic or polychromatic.

However, the purpose of the invention of Mucher et al. is to provide a liner which is graphically enhances and utilizes matching colorations to match contemporary color schemes and patterns utilized by truck owners.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the pictorial designation or logo of Mucher et al. and further the patterned layer itself monochromatic or polychromatic so that various colorations could be created thereby enhancing the overall aesthetics of the liner and vehicle.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mucher et al. as applied to claim 21 above.

Mucher et al. lack the liner having a clear fourth layer on the clear third layer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed an additional clear fourth layer upon the clear third layer of the liner of Mucher et al. in order to provide added protection to the liner and also to the patterned second layer since heavy cargo can easily damage the upper surface of the liner and since ultra-violet rays from the sun can also easily damage any exposed surface of the vehicle bed.

9. Claims 21-22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blyth et al. in view of the well known prior art.

Blyth et al. disclose a bed liner for the cargo area of a vehicle comprising in combination: a first base layer of foam material; a patterned (chopped glass mat) second layer secured to the first base layer; and a generally white Gel coat or third layer secured to the patterned layer for permitting the patterned layer to be viewed. The liner is relatively inflexible in that the liner is

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formed of rigid plastic “sections” and does not flex. The liner is relatively “flexible”, as broadly interpreted, in that it can be easily assembled and disassembled to thereby remove the liner from the vehicle. The patterned layer is monochromatic, generally “white”.

Blyth et al. lack the Gel coat third layer being clear, however, “clear” gel coats are well known in the art for use on laminates and glass mat structures (see reference to Luna 4,008,949).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed a clear gel coat as taught by the well known prior art upon the second layer in order to allow the color or pigmentation of the second layer to show therethrough while providing additional protection for this layer and preventing fading or noticeable damage thereof.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blyth et al., as modified and applied to claim 21 above.

Blyth et al. lack the liner including a clear fourth layer on the clear third layer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed an additional clear fourth layer upon the clear third layer of the liner of Blyth et al. in order to provide added protection to the liner and also to the patterned second layer since heavy cargo and extreme temperatures can readily damage the liner upper surface.

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Response to Arguments

11. Applicant's arguments filed 12/13/2002 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a unitary or integral three layer bedliner) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant states that the invention is structurally very different from the Mucher reference. However, the examiner would like to point out that the interpretation of the reference is based upon the claim language as broadly recited and interpreted.

With respect to the Blyth reference the applicant states that this structure has nothing to do with the layered apparatus of the present invention. The examiner disagrees and believes that the layered bedliner of Blyth reads on the invention as claimed. Furthermore, the applicant goes on to state that there is no patterned second layer on a base layer, with a clear outer layer to enable the patterned second layer to be viewed. The examiner disagrees and believes that Blyth does disclose a patterned second layer, specifically the chopped glass mat layer, on a base layer (foam material), with a clear outer layer (white Gel coat) to enable the patterned second layer to be viewed (see rejection above).

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With regard to Luna '949 the applicant states that this reference is for a decorative helmet and not a bedliner. The examiner agrees and is using this reference to point out that "clear" gel coats are well known in the art for use on laminates and glass mat structures. Furthermore, the applicant states that the reflective chips do not comprise a layer. The examiner disagrees and believes that once dry the "layer of clear gel coat containing metal flakes" does indeed form a "layer" as stated in the reference. Furthermore, the examiner believes Luna is appropriate as a teaching reference.

Finally, the applicant states that the examiner does not understand the terms "relatively flexible" and "relatively inflexible" as used in the specification and claims. The examiner is interpreting these words broadly and believes that the words can have alternate meanings. The applicant goes on to state that the term "flexible" has nothing to do with durability and refers only to the capacity of an article to flex. The examiner disagrees and is broadly interpreting flexible in the claims to mean a bedliner that can be easily removed or modified without hassle. Additionally, the applicant points out that a "relatively inflexible" article may not flex. The examiner is using this interpretation of the term in the same manner for the claims. Specifically, the bedliners of Mucher and Blyth are both "relatively inflexible" since the bedliners do not "flex".

Conclusion

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Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication from the examiner should be directed to Hilary L. Gutman whose telephone number is (703) 305-0496.

14. Any response to this final action should be mailed to:

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231

or faxed to:

(703)305-3597, (for formal communications; please mark "EXPEDITED
PROCEDURE")

or:

(703)305-0285, (for informal or draft communications, please clearly label
"PROPOSED" or "DRAFT").

hlg
12/24/02

STEPHEN T. GORDON
PATENT EXAMINER